

116TH CONGRESS  
1ST SESSION

# S. 2184

To amend the Truth in Lending Act and the Higher Education Act of 1965 to require certain creditors to obtain certifications from institutions of higher education, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 18, 2019

Mr. DURBIN (for himself, Mr. REED, Mr. BROWN, Mr. CARDIN, Ms. BALDWIN, and Ms. SMITH) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Truth in Lending Act and the Higher Education Act of 1965 to require certain creditors to obtain certifications from institutions of higher education, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Know Before You Owe  
5 Private Education Loan Act of 2019”.

6 **SEC. 2. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

7 (a) IN GENERAL.—Section 128(e) of the Truth in  
8 Lending Act (15 U.S.C. 1638(e)) is amended—

1           (1) by striking paragraph (3) and inserting the  
2 following:

3           “(3) INSTITUTIONAL CERTIFICATION RE-  
4 QUIRED.—

5           “(A) IN GENERAL.—Except as provided in  
6 subparagraph (B), before a creditor may issue  
7 any funds with respect to an extension of credit  
8 described in this subsection, the creditor shall  
9 obtain from the relevant institution of higher  
10 education where such loan is to be used for a  
11 student, such institution’s certification of—

12           “(i) the enrollment status of the stu-  
13 dent;

14           “(ii) the student’s cost of attendance  
15 at the institution as determined by the in-  
16 stitution under part F of title IV of the  
17 Higher Education Act of 1965; and

18           “(iii) the difference between—

19           “(I) such cost of attendance; and

20           “(II) the student’s estimated fi-  
21 nancial assistance, including such as-  
22 sistance received under title IV of the  
23 Higher Education Act of 1965 (20  
24 U.S.C. 1070 et seq.) and other finan-

1                   cial assistance known to the institu-  
2                   tion, as applicable.

3                   “(B) EXCEPTION.—Notwithstanding sub-  
4                   paragraph (A), a creditor may issue funds with  
5                   respect to an extension of credit described in  
6                   this subsection without obtaining from the rel-  
7                   evant institution of higher education such insti-  
8                   tution’s certification if such institution fails to  
9                   provide within 15 business days of the credi-  
10                  tor’s request for such certification—

11                   “(i) notification of the institution’s re-  
12                  fusal to certify the request; or

13                   “(ii) notification that the institution  
14                  has received the request for certification  
15                  and will need additional time to comply  
16                  with the certification request.

17                  “(C) LOANS DISBURSED WITHOUT CER-  
18                  TIFICATION.—If a creditor issues funds without  
19                  obtaining a certification, as described in sub-  
20                  paragraph (B), such creditor shall report the  
21                  issuance of such funds in a manner determined  
22                  by the Director of the Consumer Financial Pro-  
23                  tection Bureau.”;

1           (2) by redesignating paragraphs (9), (10), and  
2           (11) as paragraphs (10), (11), and (12), respec-  
3           tively; and

4           (3) by inserting after paragraph (8) the fol-  
5           lowing:

6           “(9) PROVISION OF INFORMATION.—

7                   “(A) PROVISION OF INFORMATION TO STU-  
8           DENTS.—

9                           “(i) LOAN STATEMENT.—A creditor  
10                           that issues any funds with respect to an  
11                           extension of credit described in this sub-  
12                           section shall send loan statements, where  
13                           such loan is to be used for a student, to  
14                           borrowers of such funds not less than once  
15                           every 3 months during the time that such  
16                           student is enrolled at an institution of  
17                           higher education.

18                           “(ii) CONTENTS OF LOAN STATE-  
19                           MENT.—Each statement described in  
20                           clause (i) shall—

21                                   “(I) report the borrower’s total  
22                                   remaining debt to the creditor, includ-  
23                                   ing accrued but unpaid interest and  
24                                   capitalized interest;

1                   “(II) report any debt increases  
2                   since the last statement; and

3                   “(III) list the current interest  
4                   rate for each loan.

5                   “(B) NOTIFICATION OF LOANS DISBURSED  
6                   WITHOUT CERTIFICATION.—On or before the  
7                   date a creditor issues any funds with respect to  
8                   an extension of credit described in this sub-  
9                   section, the creditor shall notify the relevant in-  
10                  stitution of higher education, in writing, of the  
11                  amount of the extension of credit and the stu-  
12                  dent on whose behalf credit is extended. The  
13                  form of such written notification shall be sub-  
14                  ject to the regulations of the Bureau.

15                  “(C) ANNUAL REPORT.—A creditor that  
16                  issues funds with respect to an extension of  
17                  credit described in this subsection shall prepare  
18                  and submit an annual report to the Bureau  
19                  containing the required information about pri-  
20                  vate student loans to be determined by the Di-  
21                  rector of the Bureau, in consultation with the  
22                  Secretary of Education.”.

23                  (b) DEFINITION OF PRIVATE EDUCATION LOAN.—  
24                  Section 140(a)(8)(A) of the Truth in Lending Act (15  
25                  U.S.C. 1650(a)(8)(A)) is amended—

1 (1) by redesignating clause (ii) as clause (iii);

2 (2) in clause (i), by striking “and” after the  
3 semicolon; and

4 (3) by adding after clause (i) the following:

5 “(ii) is not made, insured, or guaran-  
6 teed under title VII or title VIII of the  
7 Public Health Service Act (42 U.S.C. 292  
8 et seq. and 296 et seq.); and”.

9 (c) REGULATIONS.—Not later than 365 days after  
10 the date of enactment of this Act, the Director of the Con-  
11 sumer Financial Protection Bureau shall issue regulations  
12 in final form to implement paragraphs (3) and (9) of sec-  
13 tion 128(e) of the Truth in Lending Act (15 U.S.C.  
14 1638(e)), as amended by subsection (a). Such regulations  
15 shall become effective not later than 6 months after their  
16 date of issuance.

17 **SEC. 3. AMENDMENT TO THE HIGHER EDUCATION ACT OF**  
18 **1965.**

19 (a) AMENDMENT TO THE HIGHER EDUCATION ACT  
20 OF 1965.—Section 487(a) of the Higher Education Act  
21 of 1965 (20 U.S.C. 1094(a)) is amended by striking para-  
22 graph (28) and inserting the following:

23 “(28)(A) Upon the request of a private edu-  
24 cational lender, acting in connection with an applica-  
25 tion initiated by a borrower for a private education

1 loan in accordance with section 128(e)(3) of the  
2 Truth in Lending Act, the institution shall within 15  
3 days of receipt of the request—

4 “(i) provide certification to such private  
5 educational lender—

6 “(I) that the student who initiated the  
7 application for the private education loan,  
8 or on whose behalf the application was ini-  
9 tiated, is enrolled or is scheduled to enroll  
10 at the institution;

11 “(II) of such student’s cost of attend-  
12 ance at the institution as determined under  
13 part F of this title; and

14 “(III) of the difference between—

15 “(aa) the cost of attendance at  
16 the institution; and

17 “(bb) the student’s estimated fi-  
18 nancial assistance received under this  
19 title and other assistance known to  
20 the institution, as applicable;

21 “(ii) notify the creditor that the institution  
22 has received the request for certification and  
23 will need additional time to comply with the  
24 certification request; or

1           “(iii) provide notice to the private edu-  
2           cational lender of the institution’s refusal to  
3           certify the private education loan pursuant to  
4           subparagraph (D).

5           “(B) With respect to a certification request de-  
6           scribed in subparagraph (A), and prior to providing  
7           such certification under subparagraph (A)(i) or pro-  
8           viding notice of the refusal to provide certification  
9           under subparagraph (A)(iii), the institution shall—

10           “(i) determine whether the student who  
11           initiated the application for the private edu-  
12           cation loan, or on whose behalf the application  
13           was initiated, has applied for and exhausted the  
14           Federal financial assistance available to such  
15           student under this title and inform the student  
16           accordingly; and

17           “(ii) provide the borrower whose loan ap-  
18           plication has prompted the certification request  
19           by a private educational lender, as described in  
20           subparagraph (A)(i), with the following infor-  
21           mation and disclosures:

22           “(I) The amount of additional Federal  
23           student assistance for which the borrower  
24           is eligible and the advantages of Federal  
25           loans under this title, including disclosure

1 of the fixed interest rates, deferments,  
2 flexible repayment options, loan forgiveness  
3 programs, and additional protections, and  
4 the higher student loan limits for depend-  
5 ent students whose parents are not eligible  
6 for a Federal Direct PLUS Loan.

7 “(II) The borrower’s ability to select a  
8 private educational lender of the bor-  
9 rower’s choice.

10 “(III) The impact of a proposed pri-  
11 vate education loan on the borrower’s po-  
12 tential eligibility for other financial assist-  
13 ance, including Federal financial assistance  
14 under this title.

15 “(IV) The borrower’s right to accept  
16 or reject a private education loan within  
17 the 30-day period following a private edu-  
18 cational lender’s approval of a borrower’s  
19 application and about a borrower’s 3-day  
20 right to cancel period.

21 “(C) For purposes of this paragraph, the terms  
22 ‘private educational lender’ and ‘private education  
23 loan’ have the meanings given such terms in section  
24 140 of the Truth in Lending Act (15 U.S.C.  
25 1650).”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall take effect on the effective date of the  
3 regulations described in section 2(c).

4 (c) PREFERRED LENDER ARRANGEMENT.—Section  
5 151(8)(A)(ii) of the Higher Education Act of 1965 (20  
6 U.S.C. 1019(8)(A)(ii)) is amended by inserting “certi-  
7 fying,” after “promoting,”.

8 **SEC. 4. REPORT.**

9 (a) IN GENERAL.—Not later than 24 months after  
10 the issuance of regulations under section 2(c), the Direc-  
11 tor of the Consumer Financial Protection Bureau and the  
12 Secretary of Education shall jointly submit to Congress  
13 a report on the compliance of—

14 (1) private educational lenders with section  
15 128(e)(3) of the Truth in Lending Act (15 U.S.C.  
16 1638(e)(3)), as amended by section 2; and

17 (2) institutions of higher education with section  
18 487(a)(28) of the Higher Education Act of 1965 (20  
19 U.S.C. 1094(a)(28)), as amended by section 3.

20 (b) CONTENTS.—The contents of the report described  
21 in subsection (a) shall include information about the de-  
22 gree to which specific institutions utilize certifications in  
23 effectively—

1           (1) encouraging the exhaustion of Federal stu-  
2           dent loan eligibility by borrowers prior to taking on  
3           private education loan debt; and

4           (2) lowering private education loan debt by bor-  
5           rowers.

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